

1  
2  
3  
4  
5  
6 UNITED STATES DISTRICT COURT  
7 WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

8 ROBERT JOHN PRESTON,

9 Plaintiff,

10 v.

11 RYAN BOYER, et al.,

12 Defendants.  
13

Case No. C16-1106-JCC-MAT

ORDER DIRECTING  
SUPPLEMENTAL BRIEFING

14 This is a 42 U.S.C. § 1983 prisoner civil rights action. On July 12, 2018, the Honorable  
15 John C. Coughenour granted plaintiff's motion to amend his complaint to add negligent hiring,  
16 retention, and supervision claims against Snohomish County, and a battery claim against Sergeant  
17 Boyer. (Dkts. 113, 114, 116, 117.) Judge Coughenour declined to allow plaintiff's proposed  
18 outrage claim against Sergeant Boyer because the allegations were insufficient to state a claim, but  
19 granted him leave to file a second motion to amend with additional factual allegations. (Dkts. 113,  
20 114.) On August 29, 2018, the undersigned granted plaintiff's motion to amend his complaint to  
21 include an outrage claim. (Dkt. 130.)

22 On October 4, 2018, Snohomish County moved to dismiss the negligent hiring, retention,  
23 and supervision claims against it. (Dkt. 138.) The County argues that a recent Washington

1 Supreme Court case, *Anderson v. Soap Lake School District*, 191 Wash.2d 343 (2018), clarifies  
2 that negligent hiring, retention, and supervision claims cannot be maintained where the employee  
3 was acting within the scope of his employment. Because defendants concede—and plaintiff does  
4 not appear to dispute—that Sergeant Boyer was acting within the scope of his employment at the  
5 relevant time, the County contends that the claims against it must be dismissed. Plaintiff disputes  
6 this characterization of Washington law and contends that *Anderson* actually supports his claims.  
7 (Dkts. 140 & 141.) In reply, the County reiterates its position that Washington law demands  
8 dismissal of the negligence claims against it, but argues that if the Court finds ambiguity in  
9 Washington law, it should certify the question for review by the Washington Supreme Court. (Dkt.  
10 142.)

11 Plaintiff has not been given an opportunity to address the County’s alternative suggestion  
12 that the Court certify the question to the Washington Supreme Court. The Court thus ORDERS:

13 (1) Plaintiff shall file a brief by **December 5, 2018**, that addresses (a) whether he agrees  
14 with defendants’ claim that Sergeant Boyer was acting within the scope of his employment during  
15 the alleged battery and outrageous conduct, (b) whether the Court should certify to the Washington  
16 Supreme Court the question of whether he may maintain his negligent hiring, retention, and  
17 supervision claims, and (c) regardless of his answer to (b), how he would frame the question to be  
18 submitted to the Washington Supreme Court.

19 (2) Snohomish County may file a reply brief by **December 14, 2018**.

20 \\\

21 \\\

1           (3)     The Clerk is directed to RE-NOTE Snohomish County's motion to dismiss (Dkt.  
2 138) for December 14, 2018, and to send copies of this order to the parties and to Judge  
3 Coughenour.

4           Dated this 13th day of November, 2018.

A handwritten signature in black ink, appearing to read "Mary Alice Theiler", written over a horizontal line.

Mary Alice Theiler  
United States Magistrate Judge